UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
DOCKET MANAGEMENT SYSTEM
400 SEVENTH STREET, SW, ROOM 401
WASHINGTON, DC 20590-0001

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Comments of

**THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY** **Docket No. FAA-2002-13918**

**Notice of Proposed Rulemaking
Revisions to Passenger Facility Charge Rule
for Compensation to Air Carriers
67 Federal Register 70878 (November 27, 2002)
USDOT, FAA 14 CFR Part 158 (Notice No. 02-19)**

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**COMMENTS OF
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Communications with respect to this document should be addressed to:

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Dated: January 9, 2003

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Comments of

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Docket No. FAA-2002-13918

The Port Authority of New York and New Jersey operates Kennedy International Airport (JFK), LaGuardia Airport (LGA) and the Downtown Manhattan Heliport (DMH) in New York, and Newark Liberty International Airport (EWR) and Teterboro Airport (TEB) in New Jersey with over 40 million combined enplanements each year. Since 1992 the Port Authority has collected over $1 billion dollars in passenger facility charge (PFC) funds. These funds have been an essential component of our ability to finance major capacity and service enhancements in the New York and New Jersey metropolitan regional airports that have been critical to the capacity and competitiveness of the airline industry for which funding would not have otherwise been available.

From the inception of the PFC program, the Port Authority has been a strong supporter and energetic participant in the program. Like the more than 330 other airports in the United States that have been approved for collection of PFC's, the Port Authority, the airlines serving the New York/New Jersey region's airports and our many customers rely on this critical source of funding. Nationwide, over $12 billion has been raised by the PFC program, with demonstrable improvements made that benefit the air traveler who ultimately pays these fees.

PFC regulations entitle the airlines to keep certain fees as compensation for their administrative costs to collect and remit PFC funds to airport operators. Any increase in the administrative fee must be justifiable, since it would result in a dollar-for-dollar decrease in the amount of investment in airport improvements through the PFC program. This reduction could affect programs that are critically important to airport investment plans today, and in the foreseeable future.

Fees retained by the airlines must fairly and equitably reflect the their administrative cost to collect and remit these fees to the airport operator. The purpose of the Passenger Facility Charge Program is to provide a source of funds for airport capital improvement that will benefit air travel, not to impose additional cost burdens on an already financially challenged airline industry. Despite the variable and inconsistent reporting of data by the airlines, the information provided and its analysis in the FAA's NPRM makes a reasonably convincing case for the proposed administrative fee increases. Regarding the proposed switch to a "collected" basis from a "remitted" basis for calculating the fee, it is not at all clear how airlines should account for the fees taken from customers who receive ticket refunds. If the airlines deduct the fee from amounts refunded to customer, there may be increased customer dissatisfaction. If the fee for refunded tickets comes out of the airports' share of PFC proceeds, it's not clear exactly which airports would pay the fee. This would also represent a further erosion of the benefits airports would realize from the PFC program, albeit a small increment in absolute dollars. The NPRM should be revised to clarify the ambiguities and specify uniform procedures for airlines to account for these monies, or, more preferably, continue to require that these fees be calculated on a "remitted" basis.

While The Port Authority of New York and New Jersey supports the airline industry's call for the proposed administrative fee increases, we also believe it is crucial to clarify the status of PFC funds collected but un-remitted in the event of airline bankruptcy and protections under Chapter 11. The PFC rules make it clear that these funds are held in trust for the airports and not to be "frozen" in bankruptcy proceedings although segregation of funds is not provided for in PFC legislation. We recognize that while FAA may not be able to unilaterally address this issue via rulemaking or regulation, we ask that the FAA champion the effort to protect these funds for the airport community.

Finally, we want to express our appreciation of the FAA personnel who have worked diligently to get data from the airlines and then to exercise judgment to make a reasonable fee structure that protects the public interest. Thank you for the opportunity to comment on this important program for airport development.

Respectfully submitted,

William R. DeCota, Director
Aviation Department
The Port Authority of New York and New Jersey